

Patrick McCaffrey #1173302

Name

Lovelock Correctional Center

1200 Prison Rd.

Lovelock NV 89419

Plaintiff in pro se

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Patrick McCaffrey

Plaintiff

vs.

C/O Martinez

John Doe 1

John Doe 2

John Doe 3

Defendant(s).

Case No. _____

(Supplied by Clerk of Court)

CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

Jury Trial Demanded

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, Patrick McCaffrey,
(print plaintiff's name)

who presently resides at 1200 Prison Rd. Lovelock, NV 89419 were violated by

the actions of the below-named individuals that were directed against Plaintiff at

Lovelock Correctional Center

(institution/city where violation occurred)

on the following dates:

1/26/2021, 1/26/2021

(Claim 1)

(Claim 2)

1/26/2021 and 1/26/2021

(Claim 3)

(claim 4)

LCC LL FORM 36.022

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

- 2) Defendant C/O Martinez^{works} resides at 1200 Prison Rd, Lovelock, NV, and is
(full name of first defendant) (address of first defendant)
employed as correctional officer. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting

under color of law: Defendant exercised power possessed by virtue of state law and made possible only because he was clothed with the authority of state law.

- 3) Defendant John Doe 1^{works} resides at 1200 Prison Rd, Lovelock, NV, and is
(full name of first defendant) (address of first defendant)
employed as correctional officer. This defendant is sued in his/her
☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting

under color of law: Defendant exercised power possessed by virtue of state law and made possible only because he was clothed with the authority of state law.

- 4) Defendant John Doe 2^{works} resides at 1200 Prison Rd, Lovelock, NV, and is
(full name of first defendant) (address of first defendant)
employed as to be determined. This defendant is sued in his/her
☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting

under color of law: Defendant exercised power possessed by virtue of state law and made possible only because he was clothed with the authority of state law.

FN1) Plaintiff expects to learn full name in discovery.

FN2) Plaintiff expects to learn position and title in discovery.

- 5) Defendant John Doe 3 ^{works} resides at 1200 Prison Rd., Law/okav, and is employed as to be determined. This defendant is sued in his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: Defendant exercised power possessed by virtue of state law and made possible only because he was clothed with the authority of state law.
- 6) Defendant _____ resides at _____, and is employed as _____. This defendant is sued in his/her _____ individual _____ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: _____
- 7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.
42 U.S.C. ss 12132; 29 U.S.C. ss 794;
28 U.S.C. ss 1367

B. NATURE OF THE CASE

- 8) Briefly state the background of your case.

This is a civil rights action filed by Black McLooney, a state prisoner, for damages and declaratory and injunctive relief under 42 U.S.C. ss 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA), alleging deliberate indifference to serious risk of harm in violation of the Eighth Amendment to the United States Constitution, discrimination based on

Plaintiff's disability, the exclusion from and/or denial of the benefits of a service, program or activity, because of Plaintiff's disability, and that Plaintiff was discriminated against solely by reason of his disability. Plaintiff also alleges the tort of negligence.

C. FACTS

9. Plaintiff contracted encephalitis when he was seven years old.

10. As a result, Plaintiff suffers severe physical and intellectual disabilities, and has difficulty walking.

11. At all times relevant to this Complaint, Plaintiff has been incarcerated at Lovelock Correctional Center (LCC), and has been housed in housing unit 1A.

12. Housing unit 1A is the closest housing unit to the chow hall, where inmate meals are served.

13. Plaintiff is not the only physically-disabled inmate at LCC, or even in housing unit 1A.

14. Outside of housing unit 1A is an asphalt "track" - a circular walkway about a quarter-

mile long. If one were to walk outside of housing unit 1A and towards the track, one could either turn left or right once reaching the track: by turning left and following the track, one would have to walk roughly 90 percent of the distance of the track to reach the chow hall - this is commonly referred to as "the long way to chow" by both staff and inmates at LCC. By contrast, if one were to walk out housing unit 1A and turn right, one would have to walk roughly 10 percent of the distance of the track to reach the chow hall. This is referred to as "the short way to chow."

15. Prior to Jan. 26, 2021, physically-disabled inmates were allowed to take the short way to chow; all other inmates were required to take the long way.

16. But on the morning of Jan. 26th, 2021, Defendant John Doe 1, who was stationed in gun tower 2 (gun towers are posts located within the prison from which officers monitor inmates and direct operations - the officer in gun tower 3 oversees the area of LCC relevant

to this Complaint) ordered via a loudspeaker for all inmates to "take the long way to chow" due to construction taking place.

17. Plaintiff complied with John Doe 1's order.

18. At the time, the track was covered with snow, and it was presently snowing.

19. The snow had not been shoveled from the track.

20. Some portions had evidently been sprinkled with salt, but other portions had not been. Specifically, the stretch of track between housing units 1B and 2A had not been salted. (If one were to walk out of 1A and take the long way to chow, one would walk past housing unit 1B, then walk past some open space, then past housing unit 2A, then housing unit 2B, then walk adjacent to the education building, then past gun tower 2, then past the gym, and then reach the chow hall.)

21. Plaintiff slipped and fell on the stretch of track between housing units 1B and 2A.

This was at about 7:45 a.m. on Jan. 26, 2021.

22. The fall caused Plaintiff to suffer a bone fracture in his right arm and severe swelling in his right elbow.

23. Once Plaintiff fell, he observed frozen tire tracks that had been concealed by the freshly-fallen snow but were revealed by his footprints. (Correctional officers and other LCC staff often drive off-road vehicles, which they refer to as "Gators," on the track.)

24. Plaintiff was helped up by other inmates after lying on the ground for 10 to 20 minutes.

25. Defendant C/O Martinez was stationed outside the chow hall at all relevant times. Martinez walked towards Plaintiff as Plaintiff was being helped back to his feet.

26. Martinez presented Plaintiff an ultimatum: "Do you want to go to chow or to medical?" ("Medical" refers to the medical facility at LCC.)

28. Plaintiff chose medical, and was thus

denied two meals: breakfast and lunch (LCC provides inmates lunch in a paper bag at breakfast).

29. Plaintiff went to medical, where his right arm was X-rayed; he was given a cortizone shot; and his right arm was placed in a sling.

30. Defendant John Doe 2 is the commanding officer on shift on the morning of Jan. 26, 2021. LCC has a "shift command" officer on duty at all times. This officer is the highest-ranking officer present. It is his or her job to direct the operations of the prison, such as inmate movement. This officer may be of any rank at any given time.)

31. Doe 2 had actual knowledge on Jan. 26, 2021 that LCC houses physically-disabled inmates; that some of those inmates reside in housing unit 1A, including Plaintiff; that the track was covered in snow; that at 7:45 am it was actively snowing; and that LCC staff often drive vehicles on the track. Doe 2 also had actual knowledge that inmates would be required to take the long way to chow that day, due to construction.

32. LCC staff occasionally deliver meals to housing units in to-go containers — some times to officers and sometimes to inmates on certain days for religious purposes. However, as of Jan. 26, 2021, LCC staff summarily dismissed inmates requests to have meals brought to them because of physical disabilities (even though, shortly before Jan. 26, 2021, housing unit 1A was locked down due to COVID-19, and staff delivered meals to all inmates in 1A for about a month).

33. Defendants Martinez, Doe 1, and/or Doe 2, could have ordered that meals be delivered to physically-disabled inmates on the morning of Jan 26, 2021, but chose not to do so.

34. Defendant John Doe 3 is the individual who drove the vehicle on the track, leaving tire tracks in the snow which froze and then were covered by fresh snow. Doe 3 had actual knowledge that inmates would have to walk the track to get to chow; that the temperature was below freezing; and that physically-disabled inmates are housed at LCC.

1 35. LCC has a video surveillance system.

2 Upon information and belief, staff can access
3 up to 60 days of footage; specific footage
4 can be saved permanently.
5

6 36. After the fall, Plaintiff sent an inmate
7 request form (sometimes called a "kite") to
8 administration detailing the events of Jan. 26,
9 2021 and requesting that relevant footage
10 be saved. He received no response.
11

12 37. Plaintiff's right elbow is permanently deformed
13 as a result of the fall.
14

15 38. Plaintiff suffers decreased range of motion of
16 about 10 percent as a result of the fall. In
17 other words, he can't straighten his right arm all
18 the way. This is due to atrophy of the right
19 supinator muscle.
20

21 39. Plaintiff suffers weakness in his right hand as
22 a result of the fall, particularly in the fourth
23 and fifth digits (ring and pinky fingers) — as
24 a result, his ability to grip objects is decreased
25 by 20 percent.
26

27 ///

1 40. Plaintiff experiences pain in his right elbow
2 in cold weather, signaling arthritis secondary
3 to subluxation (dislocation) of ulna bone (right
4 elbow) due to the fall.

5
6 41. Plaintiff suffered torn connective tissue around
7 his right elbow due to the fall.

8
9 42. Plaintiff will continue to suffer arthritis as
10 a result of the fall.

11
12 43. Plaintiff suffers and will permanently suffer
13 paresthesia in his right hand as a result of the fall.

14
15 44. Plaintiff will have few if any occupations available
16 to him due to the permanent injuries caused by
17 the fall. Specifically, Plaintiff hoped to work
18 part time at a grocery store upon release from
19 prison. Even considering his pre-incarceration dis-
20 abilities, he could have done so.

21
22 45. The permanent injuries caused by the fall
23 will limit his ability to do day-to-day ac-
24 tivities, like cooking, cleaning, grocery shopping,
25 etc.

26
27 //

28
29 //

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1 46. These injuries have and will continue to cause
2 emotional injuries as well. Plaintiff has become
3 socially withdrawn as a result of the fall
4 and injuries from the fall. Inter alia, Plaintiff
5 is now extremely self-conscious about shaking hands
6 with people. Plaintiff also has social anxiety
7 now when eating or drinking around other people
8 — which is especially cruel since his incarceration
9 requires him to eat in the canteen hall, which is
10 always crowded at meal service.
11

12 47. These emotional injuries have caused Plaintiff
13 to become depressed.
14

15 48. Plaintiff now has trouble sleeping due to the
16 fall. This is due to both the physical injuries
17 — if he rolls onto his right arm in his sleep,
18 the pain wakes him up — and the emotional
19 injuries.
20

21 49. Subsequently, the lack of sleep and depression,
22 jointly and severally, cause him to be less
23 alert mentally throughout the day. As a result,
24 the intellectual disabilities Plaintiff suffered
25 before the fall are exacerbated, which makes him more
26 depressed and unable to sleep, in a vicious never-ending cycle.

27 50. Plaintiff exhausted all administrative remedies.
28

D. CAUSE(S) OF ACTION

CLAIM 1

The following civil rights have been violated: Eighth Amendment —
Deliberate Indifference to serious Risk of
Harm

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff sues all four Defendants in this
claim. Each Defendant (a) knew about the risk
to Plaintiff; and (b) failed to respond reasonably.

Specifically, each Defendant had actual knowledge
that Plaintiff was disabled; that construction was taking
place that prevented Plaintiff from taking the short
way to chow; and that snow and ice were present
on the track. Each Defendant failed to respond
reasonably — each Defendant could have ordered
that breakfast be delivered to Plaintiff.

CLAIM 2

The following civil rights have been violated: Americans With Disabilities Act

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff sues all four Defendants in this claim.
Plaintiff is (a) an individual with a disability;
(b) otherwise qualified to participate in or receive
the benefit of being provided meals by the prison;
(c) was excluded from participation in and/or denied
the benefit of receiving meals by each of the four
Defendants; and (d) each of the four Defendants
excluded him and/or denied him the benefit of
being provided meals by reason of his disability.

CLAIM 3

The following civil rights have been violated: Rehabilitation Act

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff sues all four Defendants in this claim.
Plaintiff is (a) an individual with a disability; (b)
otherwise qualified to receive the benefit of re-
ceiving meals; but all four Defendants (c) denied him
those benefits solely because of his disability;
and (d) Lovelock Correctional Center and/or the
Nevada Department of Corrections receives federal
financial assistance.

CLAIM 4

The following civil rights have been violated:
the right to be free from the tort of negligence
under Nevada law

Supporting Facts: Plaintiff sues John Doe 3 in
this claim. Doe 3 (a) owed a duty of care to
Plaintiff; (b) Doe 3 breached that duty by
creating an unnatural accumulation of weather
inasmuch as he or she caused the tire tracks
that froze; (c) those frozen tire tracks caused
Plaintiff to slip and fall; and (d) Plaintiff
suffered, inter alia, a broken arm as a result.

- 9) Have you filed other actions in state or federal courts involving the same or similar facts as involved in this action? Circle one: Yes or No. If your answer is "Yes," describe each lawsuit. (If more than one, describe the others on an additional page answering the following questions.)

- a) Defendants: _____
- b) Name of court and docket number: _____
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):

- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 10) Have you filed an action in federal court that was dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted? Circle one: Yes or No. If your answer is "Yes," describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page answering the following questions.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (circle one): (1) frivolous;
 (2) malicious; or (3) failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (circle one): (1) frivolous;
(2) malicious; or (3) failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (circle one): (1) frivolous;
(2) malicious; or (3) failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

D. REQUEST FOR RELIEF

I believe I am entitled to the following relief: (1.) Compensatory damages against all four Defendants, jointly and severally, for Claims 1-3; and against Doe 3 for Claim 4. (2.) Punative damages against all four Defendants for Claim 1. Nominal damages for Claims 1-3 against all Defendants; and against Doe 3 for Claim 4. (3.) Injunctive relief. (4.) Declaratory relief. (5.) Other such relief as deemed appropriate by this honorable Court.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Anonymous³

(name of person who prepared or helped prepare this complaint if not the plaintiff)

X Patrick McElroy
(signature of plaintiff)

February 28, 2022
(date)

FN3)

This Complaint was prepared by an inmate other than the Plaintiff. That inmate was not provided to Plaintiff by prison officials — indeed, that inmate fears retaliation by prison officials for his assistance to Plaintiff. Plaintiff himself could not possibly prepare a civil rights complaint due to his physical and/or intellectual disabilities (either alone is sufficient to preclude him from doing so).